



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11244090

Date: JUN. 8, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mechanical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not qualified for classification as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Director did not make a determination regarding the Petitioner's eligibility as a member of the professions holding an advanced degree. The record reflects that the Petitioner possesses the foreign equivalent of a baccalaureate degree and at least five years of progressive experience in the specialty. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) and (3)(i)(A)-(B).⁴

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating that he "intend[s] to continue using [his] expertise and knowledge in the field of Mechanical Industrial Engineering" and his "career plan in the United States is to work with U.S. multinational companies [as] a Mechanical Engineer." In response to the Director's request for evidence (RFE), the Petitioner offered an updated statement indicating that he "intend[s] to prospect job opportunities in different companies that are experiencing a high demand of engineering talent." In addition, he claimed:

My overall goal is to work as a Mechanical Engineer in the U.S. automotive industry, and I will also serve numerous field areas, including manufacturing, quality, maintenance, and safety. I will standardize innovative strategies, which will produce new levels of productivity by 1) launching cost reduction strategies, 2) enhancing customer satisfaction, and 3) improving production targets. This will lead to company-wide growth, and it will also heighten my served entity's market relevance, and overall finance gains.⁵

³ *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As he meets the classification as a member of the professions holding an advanced degree, a determination regarding the Petitioner's classification as an individual of exceptional ability is moot.

⁵ The Petitioner also asserted that he "intend[s] to pursue job opportunities in the following companies: General Motors, Ford Motor Company, Toyota, BMW Group, Fiat Chrysler Automobiles, among others." As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to

The Petitioner maintains on appeal that his “proposed endeavor is to work as a Mechanical Engineer in the Automotive Industry, and helping U.S. auto manufacturing companies in pursuing, adapting, and implementing engineering solutions and advancements required to excel in today’s competitive global marketplace.” The Director determined that the Petitioner demonstrated the substantial merit of his proposed endeavor, and the record supports that conclusion.⁶ For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of his proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his providing mechanical engineering services to auto manufacturing companies rather than the national importance of the mechanical engineering or the U.S. automotive field or industry. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In his appeal brief, the Petitioner argues that “[t]hroughout his career, [he] has acquired many techniques to solve critical problems in an organized and systematic manner,” “has worked as a mechanical and quality engineer in the automotive industry,” and his “knowledge and expertise are unique, and urgently needed in the U.S.” The Petitioner’s experience and abilities in his field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner claims that “[h]e will offer significant improvements to his served companies’ production flows, and create innovative manufacturing, quality, maintenance, and overall engineering standards” and “will support U.S. auto manufacturers in developing a competitive edge in both national and international markets,” he has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.⁷ In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does

work in order to determine whether his proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

⁶ The record includes documentation regarding the engineering job market in the United States.

⁷ The Petitioner claims that he provided “Industry Reports and Articles” as evidence of the economic impact of his proposed endeavor. The record reflects that in response to the Director’s RFE, the Petitioner submitted articles relating to business designs and logos, such as “What Role Does Design Play In Business Success?”; “The Importance of Having the Right Logo”; “Beyond Design Thinking”; “Marketing Matters Now More than Ever”; “Here’s Why Good Design Isn’t Negotiable for Your Business”; and “The Business Value of Design.” The Petitioner did not explain how the evidence relates to his proposed endeavor, let alone shows its national importance.

not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential or futuristic employers, to impact the U.S. auto industry or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not established that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While he references U.S. auto sales and employment statistics, the Petitioner does not demonstrate how his specified proposed endeavor would somehow influence those figures. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's mechanical engineering work would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.